



## **DEPARTMENT OF LABOR**

### **Employment and Training Administration**

Comment Request for Information Collection for Form ETA-9165, Employer-Provided Survey Attestations to Accompany H-2B Prevailing Wage Determination Request Based on a Non-OES Survey (OMB Control Number 1205-0516), Extension.

**AGENCY:** Employment and Training Administration (ETA), Labor.

**ACTION:** Notice.

**SUMMARY:** The Department of Labor (Department or DOL), as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)). This program helps ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

Currently, the Employment and Training Administration (ETA) is soliciting comments concerning the collection of data on the Form ETA-9165, Employer-Provided Survey Attestations to Accompany H-2B Prevailing Wage Determination Request Based on a Non-OES Survey (OMB Control Number 1205-0516), which expires on October 31, 2015. A copy of the proposed information collection request can be obtained free of

charge by contacting the office listed below in the addressee section of this notice.

The form is used by employers in DOL's H-2B temporary non-agricultural employment-based program to collect information that demonstrates compliance with the new standards applicable to employer-provided surveys in the H-2B program and to assist the Department in reviewing those surveys.

**DATES:** Written comments must be submitted to the office listed in the addresses section below on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** Submit written comments to Brian Pasternak, National Director of Temporary Programs, Office of Foreign Labor Certification, Room C-4312, Employment & Training Administration, U.S. Department of Labor, 200 Constitution Avenue NW, Washington, DC 20210. Telephone number: 202-693-3010 (this is not a toll-free number). Individuals with hearing or speech impairments may access the telephone number above via TTY by calling the toll-free Federal Information Relay Service at 1-877-889-5627 (TTY/TDD). Fax: 202-693-2768. E-mail: [ETA.OFLC.Forms@dol.gov](mailto:ETA.OFLC.Forms@dol.gov) subject line: ETA-9165. A copy of the proposed information collection request (ICR) can be obtained free of charge by contacting the office listed above.

## **SUPPLEMENTARY INFORMATION:**

### **I. Background**

The information collection (IC) is required by sections 101(a)(15)(H)(ii)(b) and 214(c) of the Immigration and Nationality Act (INA) (8 U.S.C. 1011(a)(15)(H)(ii)(b) and 1184(c)), and implementing regulations at 20 CFR 655.10 and 8 CFR 214.2(h). Before

an employer may petition for any temporary unskilled foreign workers, it must submit a request for certification to the Secretary of Labor containing the elements prescribed by the INA and the Department's implementing regulations, which differ depending on the visa program under which the foreign workers are sought. The H-2B program enables employers to bring nonimmigrant foreign workers to the U.S. to perform nonagricultural work of a temporary or seasonal nature as defined in 8 U.S.C. 1101(a)(15)(H)(ii)(b). For purposes of the H-2B program, the INA and governing federal regulations require the Secretary of Labor to certify, among other things, that any foreign worker seeking to enter the United States (U.S.) temporarily for the purpose of performing certain unskilled labor will not, by doing so, adversely affect wages and working conditions of U.S. workers similarly employed. The Secretary must also certify that there are not sufficient U.S. workers available to perform such labor. (8 CFR 214.2(h)(6)(i)(A), (iii)(A).)

Prior to submitting labor certification applications to the Secretary of Labor, employers must obtain a prevailing wage for the occupation in the area of intended employment in order to ensure that wages are not being adversely affected by paying foreign workers less than a prevailing wage. Under the regulations, employers may choose to submit an employer-provided survey as long as they meet the criteria set forth in the regulations at 20 CFR 655.10(f). In addition, ETA has codified the standards it uses to assess employer provided surveys that may be relied on to set the prevailing wage. The Department has established a new information collection, the Form ETA-9165, Employer-Provided Survey Attestations to Accompany H-2B Prevailing Wage Determination Request Based on a Non-OES Survey, in order to increase compliance with the new standards applicable

to employer-provided surveys and to assist the Department in reviewing those surveys.

The Department uses the information collected to determine the adequacy of the data provided and validity of the methodology used in conducting the survey submitted by an employer in the H-2B program.

## **II. Review Focus**

DOL is particularly interested in comments that:

- evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- enhance the quality, utility, and clarity of the information to be collected; and
- minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

## **III. Current Actions:**

Type of Review: Extension.

Title: Employer-Provided Survey Attestations to Accompany H-2B Prevailing Wage

Determination Request Based on a Non-OES Survey.

OMB Number: 1205-0516.

Affected Public: Private Sector–businesses or other for profits and not-for-profit institutions, Federal Government, and State, Local and Tribal Governments.

Form(s): ETA-9165, Employer-Provided Survey Attestations to Accompany H-2B Prevailing Wage Determination Request Based on a Non-OES Survey.

Total Annual Respondents: 278.

Annual Frequency: On occasion.

Total Annual Responses: 278.

Average Time per Response: 25 Minutes.

Estimated Total Annual Burden Hours: 116.

Total Annual Burden Cost for Respondents: \$5,639.

Comments submitted in response to this comment request will be summarized and/or included in the request for OMB approval of the ICR; they will also become a matter of public record. Commenters are encouraged not to submit sensitive information (e.g., confidential business information or personally identifiable information such as a social security number).

SIGNED:

**Portia Wu,**

Assistant Secretary for Employment and Training, Labor.

**BILLING CODE – 4510-FP-P**

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